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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUN - 8 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment to the Commission's)
Regulatory Policies Governing)
Domestic Fixed Satellites and) IB Docket No. 95-41
Separate International Satellite)
Systems)

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COMMENTS OF
DIRECT BROADCASTING SATELLITE CORPORATION

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June 8, 1995

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SUMMARY

Direct Broadcasting Satellite Corporation ("DBSC"), a permittee in the DBS service, herewith files its Initial Comments in Docket No. IB 95-41. DBSC strongly supports the Commission's proposal to allow domestic and international FSS licensees to participate fully in both domestic and international satellite services. As the Commission correctly notes, such participation will permit market forces to operate more fully and rationally, and can only serve the public interest by eliminating outmoded and unjustifiable distinctions based on regulatory history.

DBSC also strongly supports the NPRM's suggestion that DBS licensees also be freed from their historical limitation to the provision of purely domestic service. DBSC has already invested substantial time and resources in an effort to provide DBS service to Western Europe, Latin America, and the Pacific region. DBSC believes that serving such markets would improve DBSC's ability to enter the domestic market as the third or fourth entrant, enhance opportunities for American programmers to sell their product in foreign markets and improve U.S. balance of trade and balance of payments in the information sector.

Moreover, because DBSC has proposed to provide international DBS only with the concurrence of every affected foreign administration, there is no possibility that the U.S. would violate its international treaty obligations by participating in such service.

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COMMENTS OF
DIRECT BROADCASTING SATELLITE CORPORATION

In a Notice of Proposed Rulemaking ("NPRM") released in the above-captioned docket on April 25, 1995 (FCC 95-146), the Commission endorsed the elimination of certain historical distinctions between its regulatory regimes for domestic and international FSS (fixed-satellite service). It also sought comment on the desirability of including in its new unified satellite regulations MSS (mobile-satellite service) and DBS (Direct Broadcast Satellite) services. Direct Broadcasting Satellite Corporation ("DBSC"), a conditional permittee in the DBS service, hereby submits its initial Comments to the Commission.

In the NPRM the Commission concludes that eliminating the so-called Transborder Policy and modifying the Separate Systems Policy so as to permit FSS licensees with international authorizations to provide domestic service and FCC licensees with domestic authorizations to provide international service would enhance competition, permit

satellite operators to better meet their customers' needs, and contribute to the growth of the "information superhighway." DBSC strongly endorses these proposed policy changes as being in the public interest. DBSC also strongly urges the Commission to extend its new, unified satellite policy to encompass the provision of international DBS service by DBSC (and other DBS operators).

The NPRM articulates a rationale for the proposed policy changes in FSS services which may be summarized as follows:

- ° Elimination of artificial distinctions between classes of service providers will permit more economically efficient, diverse and competitive offerings to the licensees' customer base;
- ° In the realm of international satellite services, there are two considerations above and beyond those applicable to domestic service: securing the requisite permission of relevant foreign administrations, and adhering to the international obligations of the U.S. The latter consist of obligations arising out of treaty obligations to the ITU, and those arising out of the INTELSAT and INMARSAT agreements.

The Commission concludes that, subject to securing agreement with the relevant foreign administrations, the domestic/international distinction is outmoded and should be eliminated so far as possible. The NPRM notes that it is not likely that INTELSAT will object to the proposed expansion of international service under article XIV(d) of the INTELSAT Agreement because of changes in INTELSAT's own circumstances. Accordingly, because there are strong reasons to encourage new entry and more vigorous competition, and no apparent barriers in principle to such entry, the NPRM

concludes that such entry should be encouraged.

DBSC agrees entirely with every step of the Commission's analysis. Moreover, the result reached by the Commission with respect to FSS service a fortiori makes the application of the proposed policy mandatory for DBS service. Any other outcome would produce the anomaly of FSS licensees providing DBS¹ services domestically (as they already do) and internationally while the DBS licensee is foreclosed from the provision of DBS internationally. Indeed, the Commission favors extension of its new policy to DBS because offering domestic and international DBS on a co-primary basis "appears to foster the same goals as eliminating geographic restrictions for U.S. fixed-satellites -- increased competition, increased consumer choices, and further development of the global information infrastructure." (NPRM, par. 38). The NPRM is exactly right in reaching this conclusion. Moreover, it hardly needs to be emphasized that in terms of the "information superhighway", the opportunity for a U.S. based DBS operator to provide U.S. programming to other countries or to distribute foreign language programming to the U.S. would be an enormous contribution to the equalization of opportunities for programming, entertainment, cultural exchange and even

¹ Some commentators refer to DBS service as direct-to-home or "DTH" service. See, e.g. Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (Notice of Inquiry), FCC 95-186, rel. May 24, 1995, par. 39. As the Commission well knows, and as documented in DBSC's earlier submission (App. A, pp. 13-14), numerous FSS licensees are already providing quasi-DBS in the U.S. and are planning to do so internationally.

inexpensive data exchange.

On September 8, 1994, DBSC requested authority to provide international and/or foreign domestic DBS service from its two assigned orbital locations (61.5° and 175° W.L.). For convenience, a copy of that filing is attached as Appendix A hereto. DBSC's filing discusses at length the public interest advantages of permitting DBSC to offer DBS service beyond the U.S. borders. At p. 16 of that filing, DBSC noted that as far back as 1982 the Chairman of the FCC foresaw the extension of DBS internationally:

DBS can be a powerful tool both domestically and internationally. Of course, DBS is intended to serve the contiguous United States but a worldwide system of orbs linking all people and all lands is not beyond the power of DBS. DBS, 90 FCC 2d 676, 728 (1982) (Chairman Fowler concurring.)

DBSC further noted:

The enormous economic and cultural potential for internationalization of television programming is already well established in the FSS bands. The relevance of DBS program delivery is as current as the recent NCTA convention at which the possible reliance of U.S. programmers on DBS technology (among others) for delivery in other countries was the subject of a panel discussion.¹⁶ There is nothing in the Region Two plan adopted at ... RARC-83 which compels the U.S. to restrict its DBS operators to domestic service. See, generally, Regulatory Policy Regarding the Direct Broadcast Satellite Service, 94 FCC 2d 741, 744, 752 (1983).

¹⁶ Communications Daily, Vol. 14 No. 103 (May 27, 1994), p. 2 ("Significant and profound sea change [in programming opportunities] in Third World, especially Asia" says spokesman for HBO Asia).

While coordination with INTELSAT under Article XIV(d) of the INTELSAT Agreement is a relevant consideration for the broad policy proposed in the NPRM, it should be noted

that it is not relevant to the DBS service. Article I(1) of the INTELSAT Intergovernmental Agreement, 23 U.S.T. 3813, 3853, TIAS 7532, defines specialized communications services to include, inter alia, broadcasting satellite service for reception by the general public. As a "specialized service", broadcasting satellite service is not subject to the economic coordination requirement set forth in Article XIV(d) of the Agreement.²

However, the NPRM raises two questions with respect to DBS: (1) whether allowing U.S. DBS operators to provide service internationally would be inconsistent with the existing RARC-83 Plan;³ and (2) whether receipt of programming originating outside the U.S. would be inconsistent with ITU Appendix 30A regarding feeder links at 12 GHz. See NPRM at paragraph 30.⁴

In its earlier filing DBSC pointed out that the provision of international DBS service would be entirely consistent with all international obligations of the U.S. if the concerned and affected foreign administrations were to agree to the proposed service. In most cases, the administrations concerned would include not only the primary

² See INTELSAT Legal Opinion, reprinted in Hearings Before The Subcommittee On Oversight and Investigations, Committee On Energy And Commerce, House of Representatives, 98th Congress, Serial No. 98-190 (1984), pp. 620-624.

³ Final Acts of the Regional Administrative Conference for the Planning of the Broadcast Satellite Service in Region 2 (Geneva, 1983) ("Final Acts").

⁴ DBS feeder links are in the 17 GHz band (17.3 GHz-17.8 GHz), not the 12 GHz band as stated in the NPRM. See Final Acts Part II, Art. 9; Annex 3, par. 1.1.

administration, i.e., the one with DBS uplinks or downlinks, but also any other technically affected by the proposed service.⁵ As DBSC noted in its prior application for international authority:

Most importantly, DBSC would accept as a condition on any grant of international authority that no breach of international treaty obligations may occur in connection with the service for which authority is sought herein. The fact is, however, that the Region Two Plan in substantial part is devoted to modification procedures and standards; that to date little or no DBS activity has been notified to the ITU from non-U.S. Region Two administrations, and that the underlying purpose of regional planning is not to stifle but to stimulate equitable access to, and use of, orbital resources. It is also a fact that of the more than 90 million households in Latin America, more than 69 million have TV service and fewer than 3 million, according to DBSC's market study, have satellite-based access to video programming. Plainly there is a large market to be served.

(App. A, pp. 21-22.)

The fact that an a priori plan exists does not mean that the concerned or affected administrations cannot modify the plan; it means only that each affected administration must agree to any changes to the plan that affect it. Indeed, the RARC-83 Plan contemplated subsequent changes to assignments in the Plan⁶ and the Commission has previously

⁵ A country could be considered "affected", for example, if its overall equivalent protection margin of one of its assignments in the plan is degraded or if it would receive on its territory an excessive power flux density. Final Acts, Part I, Art. 4, par. 4.3.1.7. See also Annex to Resolution No. COM 6/5 par. 3 for discussion of circumstances when another country is considered "affected."

⁶ Detailed procedures are provided in the Final Acts to permit a country to request formal modification of the Plan for implementation of DBS systems that deviate from the Plan. Final Acts, Part I, Art. 4. If agreement can be reached among all affected countries, the frequency

(continued...)

indicated that it would, in appropriate circumstances, authorize such amendments.⁷ In fact, all authorized full CONUS beams and use of digital in lieu of FM transmission constitute such changes. In short, and in response to the question posed in par. 38 of the NPRM, the Plan is not immutable and, with the consent of all affected administrations there would be no breach of international agreements if DBSC were to provide international DBS from its assigned DBS orbital locations. Indeed, the need for coordination is no different fundamentally from that which is applicable to FSS operators: "[S]ubject to the approval of the affected foreign country and successful consultation with Intelsat and ITU coordination with other administrations with satellite systems that may be affected, domsats would be able to provide services between the U.S. and noncontiguous points on the same basis as separate systems." (NPRM, Par. 18.) (Footnotes omitted.) The situation is exactly the same with respect to the use of feeder links at 17 GHz for DBS programming as set forth in ITU Appendix 30A.

⁶(...continued)

assignment is notified to the IFRB for registration and such assignment "shall enjoy the same status as those appearing in the plan and will be considered as a frequency assignment in conformity with the plan." Final Acts, Part I, Article 4.3.14.

⁷ "Deviations from the guidelines...of RARC-83 may be permitted with Commission approval provided they do not cause interference to operational or planned systems of other administrations in excess of that specified in the Final Acts of the...RARC-83." Direct Broadcast Satellite Service, 90 FCC 2d at 718.

In its prior filing, DBSC discussed at length the issues posed by amending the RARC-83 DBS Plan. It noted that it will be the foreign government, not the U.S., which will be seeking modification to the ITU Plan for service to its territory from DBSC's assigned locations, whether for foreign domestic or international service within its borders. See App. A, p. 24. DBSC then noted:

DBSC is not unmindful of the substantial coordination task which lies before it, both in respect to 175° W.L. and for 61.5° W.L. DBSC is also fully aware of the necessity for government-to-government agreements which are an essential element of coordination of any U.S. spacecraft's use of orbit/spectrum resources. DBSC is prepared to abide by substantive and procedural restrictions imposed on it by the Commission as the formal notifying body within the ITU for its current assignment, assuming, of course, that the restrictions are applied equally and simultaneously to any other similarly-situated entity. The task is admittedly not simple. As things stand, however, existing DBS Plans have been in effect for many years and have stimulated only very limited use of the DBS frequencies throughout the world. Because the Plans contemplate country-by-country modification but no such modifications have so far been negotiated or agreed upon, an extra effort to put the assigned orbit/spectrum resources to work for the benefit both of the U.S. and of other countries now appears justified.

In addition to the foregoing considerations, there are equitable reasons for authorizing international DBS as well. In its September, 1994 filing for international authority, DBSC noted that a number of FSS operators were proposing to offer high-power direct-to-home service to Latin America -- service which would be competitive with that proposed by DBSC. See App. A, pp. 13-14. The new unified FSS satellite policy, if adopted, would only increase the degree to which DBSC, a DBS permittee, would be subjected to competition for

the provision of international direct-to-home service. DBSC does not quarrel with the basic policy determination to let a thousand flowers bloom; it does ask that it be given a fair opportunity to compete for the international direct-to-home market in Latin America and elsewhere, without artificial limitations. Indeed, it would be arbitrary and capricious for the Commission to freely allow domsats to provide international service and separate systems to provide domestic service, but to bar DBS operators from providing international DBS service when such service has been agreed to by all affected administrations.⁸

There is one respect in which DBSC wishes, in these Comments, to go beyond the request it submitted to the Commission in September of 1994. In its earlier filing, DBSC sought permission to use only five of its requested 16 frequencies for international DBS--the five frequencies which had not been assigned to DBSC at its orbital locations. It did so based on the Commission's award to DBSC of only 11 channels for domestic DBS service, even though DBSC had requested 16 channels and has a construction

⁸ At par. 29 of the NPRM the Commission indicates its belief that the financial qualification standards applicable to domsat and separate system applicants should be harmonized. As the Commission knows DBS applicants' financial qualifications have traditionally been tested through a "due diligence" regime. Processing Procedures Regarding the Direct Broadcast Services, 95 FCC 2d 250, 253 (1983); 47 CFR Section 100.19(b). DBSC believes that such an approach for existing DBS applicants and conditional permittees should continue as a matter of fairness and predictability. Nevertheless, if the domsat/separate system test is to be applied to DBS applicants, only applicants filing after the adoption of the new rule could be legally affected.

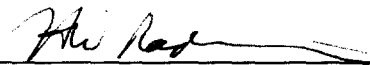
contract for two 16 transponder DBS satellites. DBSC's spacecraft, currently under construction, is fully capable of providing all the U.S. service for which DBSC is presently authorized. Nevertheless, DBSC believes that in light of the broad policy tentatively adopted in the NPRM, it should be free to use as much or as little of its satellite capacity for international DBS service as it prefers and can coordinate with U.S. licensees and arrange with foreign interests. Indeed, there is no apparent reason why domestic or international FSS operators should have unconstrained freedom to devote as much or as little of their authorized facilities to domestic or international service as they wish while DBSC is restricted to international use only for frequencies for which it will have in-orbit capacity but which have not been authorized for domestic DBS service.⁹

⁹ The DBS situation is exactly parallel to the Commission's tentative determination at par. 31 of the NPRM to eliminate the prior limitation on a domsat licensee devoting its capacity to transponder leases rather than to common carrier service. Taking account of existing DBS service (DirecTV, USSB), competitive FSS service (PrimeStar), and planned DBS service (EchoStar, Tempo DBS, DBSC, Continental) and the state-of-the-art 8:1 compression ratio, there is no prospect of any shortage of DBS service over the foreseeable future. See generally, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (Notice of Inquiry), FCC 95-186, rel. May 24, 1995 at pars. 39-42 and the 1994 Competition Report, 9 FCC Rcd 7442 at 7476.

In sum, DBSC fully supports the NPRM. It urges the Commission to adopt the new regulatory flexibility for FSS operators and to extend such flexibility to DBS as well. Such flexibility gives maximum opportunity for the private sector and free markets to seek public interest maximization of DBS facilities.

Respectfully submitted,

DIRECT BROADCASTING
SATELLITE CORPORATION

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June 8, 1995

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Before the
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Washington, DC 20554

Application of)
)
Direct Broadcasting Satellite) File No. DBS 88-08
Corporation)
)
For Amendment of Construction)
Permit To Add Authority To)
Provide International Direct)
Broadcast Satellite Service)

To: The Commission

**APPLICATION FOR AUTHORITY TO
PROVIDE INTERNATIONAL DBS SERVICE**

Direct Broadcasting
Satellite Corporation
4401-A Connecticut Ave., N.W.
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Washington, DC 20008

September 8, 1994

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EXECUTIVE SUMMARY

Direct Broadcasting Satellite Corporation ("DBSC"), a Direct Broadcast Satellite Service permittee, herein seeks authority to add service to, from, and within foreign points to its existing domestic DBS authority. DBSC proposes to provide such international service by relying on otherwise unused capacity in its two authorized satellites and by entering into joint use agreements with foreign entities that would subsequently be endorsed by the appropriate administrations. The incremental authority sought herein by DBSC will in no respect diminish its ability to meet its primary domestic service authorization.

Specifically, DBSC proposes to take advantage of the ability of its authorized spacecraft assigned to 61.5° W.L. to serve all of Central and South America, and a significant portion of Western Europe and Northern Africa. Similarly, its spacecraft authorized at 175° W.L. would be able to serve a large segment of the Pacific Rim, including portions of China and all of Korea, Taiwan, Hong Kong, Japan, Malaysia, New Zealand and Australia. In both cases DBSC would use capacity which will exist in its orbiting satellite but for which it has no U.S. domestic frequency authorization. DBSC fully understands that the U.S. is obligated to adhere to international agreements governing orbit/spectrum use and proposes to provide foreign domestic and/or international service only if it can do so consistent with existing international U.S. treaty obligations or with the

concurrence of the affected foreign administrations. By proposing to operate only in these two circumstances DBSC creates no possibility of violating international treaty obligations.

By more intensive use of U.S. and, with their concurrence, other administrations' DBS orbit/spectrum resources, DBSC would be able to create a marketing niche for itself which would enhance its ability to succeed in the U.S. domestic DBS marketplace. With a number of DBS providers already in the domestic market and others positioned to enter the market before DBSC will be ready to do so, the development of such a niche service will contribute materially to DBSC's commercial success. By developing a U.S. domestic customer base which speaks languages other than English, whether exclusively or as an adjunct to English, and by using the same programming to serve subscribers in more than one country, DBSC will be able to secure a section of the domestic DBS market which would allow it to compete more successfully with already entrenched operators and to serve a segment of the U.S. population which would otherwise be underserved.

The opportunity to export U.S.-produced programming to foreign direct-to-home subscribers should expand commercial opportunities for U.S. programmers and program distributors and help improve the U.S. balance of trade and balance of payments.

DBSC seeks herein Commission authorization in principle to offer, with the agreement and/or participation of one or more foreign entities, various forms of international DBS service. Until specific arrangements have been agreed upon with such

administrations, no spacecraft modification applications can be filed.

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Permit To Add Authority To)	
Provide International Direct)	
Broadcast Satellite Service)	

To: The Commission

**APPLICATION FOR AUTHORITY TO
PROVIDE INTERNATIONAL DBS SERVICE**

Direct Broadcasting Satellite Corporation ("DBSC"), currently the holder of a conditional construction permit to construct and operate two DBS spacecraft, one at 61.5° W.L. and another at 175° W.L., for the provision of U.S. domestic DBS service, hereby seeks to amend its existing DBS authority to encompass the provision of DBS service internationally, as more specifically set forth below. DBSC seeks such authority because it believes that the public interest in the larger and more effective use of radio would be served by grant of such authority. More specifically, DBSC seeks to put to use excess capacity in its two authorized DBS spacecraft for the provision of DBS service to, from, or within a variety of foreign countries, some or all of whose territory is visible from the orbital locations currently assigned to DBSC. The investment and/or revenue which can reasonably be anticipated from the use of such authority will materially assist DBSC in bringing to fruition its domestic DBS business. The addition of international

authority will in no way diminish, compromise, delay or impede the provision of domestic DBS by DBSC or any other domestic DBS permittee or licensee. DBSC proposes to offer international DBS services only with the concurrence or support of the Commission and the relevant foreign countries or, in the absence of such concurrence or support, in circumstances where such service would in no fashion interfere with such countries' access to, or use of, the geostationary orbit as currently reserved for their use.

DBSC will demonstrate herein that the grant of such authority, while not previously contemplated by the Commission, would broaden programming available to the U.S. DBS audience by enhancing DBSC's commercial opportunities in the marketplace. It would also improve DBSC's competitive status vis-à-vis FSS systems and vis-à-vis public and private international systems, enhance the efficient use of orbit/spectrum resources, and create the possibility of exporting U.S. produced programming and improving the U.S. balance of trade internationally.¹ Moreover, it will also stimulate the use of the Region Two Plan in other countries, where it has never been used to date.

¹ Because Direct Broadcasting Satellite Corporation does not herein seek the assignment of new orbit/spectrum resources it does not regard this filing as a request for a major change in facilities. See Processing Procedures Regarding the Direct Broadcasting Satellite Service, 95 FCC 2d 250, 252 (1983). In Satellite TV Corp., 98 FCC 2d 339 (1984), the Commission found that proposed amendments to STC's application were not major because, notwithstanding the expansion of STC's proposed service area, the system would use precisely the same amount of orbit/spectrum as previously granted and the orbit/spectrum needs of the remaining applicants would not be affected. Id. at 341. Nevertheless to avoid delay in the processing of its Application in the event the Commission concludes that this filing must be considered as a major amendment, it is being submitted with the requisite fee for a major amendment accompanied by a request for remission.

I. Background

A. The DBS Service Market

DBS service was authorized by the Commission in 1982 to create opportunities for improved program distribution, especially in rural areas, new competition for existing program distributors, technically innovative services, and programming better suited to viewers' tastes. Direct Broadcast Satellite Service, 90 FCC 2d 676 at 680 (1982), recon. den. 94 FCC 2d 741 (1983). U.S. allocations for DBS use in the 12.2 to 12.7 GHz (downlink) band were confirmed at RARC '83² which assigned to the U.S. a total of 256 DBS channels at eight nominal orbital locations ranging from 61.5° W.L. on the east to 175° W.L. on the west. There have been false starts and many frustrations, but through a 12 year gestation period the Commission's goals have not changed. Advances in compression techniques have made it feasible for DBS operators to plan on a bandwidth compression ratio in the range of 5:1 to 10:1, thereby increasing dramatically the number of channels which will be generally available to the public.

The size of the domestic DBS market is, of course, not yet known. There exist today nine DBS permittees in various stages of development. DBSC will be entering the market, whatever its size, only as a latecomer, with at least two earlier DBS entrants, DirecTv and United States Satellite Broadcasting, Inc. ("USSB") already having initiated service in approximately 12 cities. DirecTv initially is providing 60 channels of programming and USSB is providing 25-30 channels. Both entities are subsidiaries of large, financially stable enterprises with

² Processing Procedures Regarding the Direct Broadcasting Satellite Service, 95 FCC 2d 250, 254-5 (1983).

many years of experience in fields related to DBS. DirecTv is owned by Hughes Communications Galaxy, Inc. ("Hughes") which is ultimately owned by General Motors. DirecTv has one satellite in service, another in orbit undergoing in-orbit testing, and one under construction. Hughes is experienced in the production and operation of communications satellites and in the communications satellite business as a whole. USSB's parent, Hubbard Broadcasting Company, has operated numerous broadcast facilities for decades. Tempo Communications, a subsidiary of TCI and a DBS permittee, has contracted for the construction of two satellites which can be configured for DBS.³

Another authorized DBS entity, Echostar Satellite Corporation, has raised the necessary capital and its first satellite is scheduled for launch in the summer of 1995. Echostar is a subsidiary of EchoStar Communications, Inc., a company with many years of operating history, principally in receive-only satellite antennas for non-DBS spacecraft. Echostar and another DBS permittee, DirectSat Corporation ("DSAT"), have filed applications at the FCC for permission to merge their DBS activities, including orbital and channel assignments. The FCC has not yet acted on the proposal. EchoStar is planning a system with 100 or more channels based on the orbit/spectrum resources assigned to both entities.⁴

Advanced Communications Corporation has satisfied the Commission's due diligence test. Two other high-power

³ According to trade press accounts.

⁴ EchoStar has informed DBSC that it has acquired the beneficial rights to approximately 6% of DBSC from SSE Telecom ("SSET"), a former owner of DBSC shares. EchoStar has also acquired from SSET certain DBSC Notes with a common stock conversion feature.

permittees, Continental Satellite Corporation and Dominion Video Satellite, are awaiting a due diligence determination by the FCC staff. In addition, PrimeStar, a consortium of cable companies and GE Americom, is currently providing medium power service on Ku band to some 70,000 backyard TVRO subscribers and has announced plans to adopt digital compression, with a goal of providing up to 70 channels to as many as 225,000 subscribers by year end 1994. PrimeStar also has an option to acquire the capacity on the high-power Ku band satellites for which Tempo has contracted and may be planning to use either Tempo's DBS license or GE's FSS license.⁵

B. DBSC

DBSC was formed in 1981 and has been continuously attempting in the intervening years to become a DBS operator. In the 13 years of its corporate life DBSC has expended millions of dollars for administrative expenses and spacecraft construction contract progress payments. Such expenses are continuing. DBSC remains enthusiastic about the DBS industry and its individual prospects for commercial success.

DBSC has been assigned 11 channels for DBS service at 61.5° W.L. and 11 channels at 175° W.L., following acceptance of its due diligence demonstration. Direct Broadcasting Satellite Corporation, 8 FCC Rcd 7959 (1993).⁶ DBSC also has authority to use up to four transponders for spot beam coverage. Continental Satellite Corp., 4 FCC Rcd 6292, 6296, 6300 (1989). Such coverage, for example, could provide significantly higher power in the Boston to Washington corridor, allowing reception of DBS

⁵ Communications Daily, Vol. 14 No. 119 (June 21, 1994), p. 2.

⁶ Reconsideration pending.

signals in receive antennas as small as six inches in diameter. As it surveys the DBS marketplace, DBSC believes, more strongly than ever before, that there is widespread public demand for DBS service. Plainly others share this vision and the market is rapidly moving toward commercial implementation by DBS permittees.

DBSC plans to serve as its core market a variety of ethnic groups in the United States, groups that have traditionally been underserved by cable television. These groups, taken together, are a significant portion of the U.S. population; for example, the United States has the fifth largest Hispanic population in the world. Yet these groups are not large enough, by themselves, to support a DBS system.

DBSC will augment programming aimed at U.S. ethnic groups with additional programming imported by direct uplink from the home countries of these core subscribers, in their native languages and appealing to their cultural interests. In addition, because these subscribers will have mainstream U.S. interests as well, DBSC plans to offer mainstream programming such as HBO, Showtime, ESPN, and the Discovery Channel. This mainstream programming will also attract non-ethnic subscribers, especially those who are attracted by the multicultural aspects of DBSC's service. Finally, DBSC will be able to export some of this programming to the home countries of some of its subscribers by direct downlink.

This plan yields a variety of benefits:

- a) By serving subscribers in selected other countries, DBSC can increase the total subscribership sufficiently to make it practical to serve ethnic groups in the United States. In particular, the population of Alaska and Hawaii is insufficient to justify economically a dedicated western satellite, but adding service to the Pacific Rim could make it commercially practical.